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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 STANTON HARRY MCCAIN, II,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS, et
12 al.,

Defendant.

CASE NO. 3:20-cv-05650-RSM-BAT

**ORDER GRANTING MOTION FOR
EXTENSION, DIRECTING
VIEWING OF SURVEILLANCE
VIDEO, AND RE-NOTING
MOTION FOR SUMMARY
JUDGMENT**

13 This is a civil rights action brought under 42 U.S.C. § 1983. Currently before the Court is
14 plaintiff's "Motion for Extension of 45 Days to Trial Schedule and Discovery." Dkt. 41. Plaintiff
15 seeks a forty-five (45) day extension of "all due dates" in the case including "trial and
16 discovery." *Id.* Defendants have filed a response. Dkt. 43. Having considered the parties'
17 submissions, the balance of the record, and the governing law, the Court orders that plaintiff's
18 motion (Dkt. 41) is GRANTED in part and DENIED in part.

19 **DISCUSSION**

20 On January 20, 2021, defendants moved for summary judgment in this action along with
21 a motion to seal and for a protective order related to a surveillance video submitted in support of
22 their motion for summary judgment. Dkts. 27, 32. The parties subsequently moved for an
23 extension of the briefing schedule on defendants' motion for summary judgment. Dkts. 33, 34,

EXTENSION, DIRECTING VIEWING OF
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36. By order dated March 11, 2021, the Court granted in part and denied in part defendants' motion to seal and for a protective order and directed that:

- a. On or before **April 1, 2021**, defense counsel shall either: (1) arrange to facilitate a supervised viewing by Plaintiff of the video at issue, or (2) shall notify the Court and Plaintiff that they intend to withdraw the video and the Court will not consider the video or any arguments pertaining thereto in deciding defendants' motion for summary judgment.
- b. The video submitted by Defendants in support of their motion for summary judgment (Dkt. 28, Ex. 7, Dkt. 31) shall remain under seal with the Court pursuant to the terms of LCR 5.

Dkt. 40. The Court further granted the parties' requests for an extension of time (Dkt. 33, 34, 36) and directed plaintiff to file a response to defendants' motion for summary judgment by April 22, 2021, and re-noted defendants' motion to April 30, 2021. *Id.*

On March 29, 2021, plaintiff filed the instant "Motion for Extension of 45 Days to Trial Schedule and Discovery" seeking a forty-five (45) day extension of "all due dates" in the case including "trial and discovery" as well as a "Surrebutal and Clarification/Correction of the Record" which appears to set forth the basis for his request for an extension of time.¹ Dkts. 41, 42. Plaintiff appears to request an extension of time in light of various health issues including a potential need for heart surgery and loss of some personal property due to infractions including a lamp and his typewriter. *Id.* Plaintiff indicates the lack of a typewriter has slowed his ability to respond because he has difficulty with handwriting due to his medical conditions. *Id.* Plaintiff also generally alleges that the infractions he has received were retaliatory.² On March 30, 2021, defendants filed a response in which they note that no trial date has been set in this case and that

¹ The Court notes that although plaintiff cites to defendants' motion for summary judgment in this document this does not appear to constitute a full response to defendants' motion but to largely serve as support for plaintiff's request for an extension to respond to the motion. Dkt. 42.

² The Court notes that plaintiff has not moved to amend his complaint to include any additional claims of retaliation. The Court also notes that the conclusory claims of retaliation contained in his motion contain insufficient facts as stated to support separate retaliation claims.

1 the deadline for discovery expired many months ago. Dkt. 43. Defendants note that the only
2 pending deadline in the case, at the time of plaintiff's motion, was the due date for plaintiff's
3 response to defendants' motion for summary judgment and that, to the extent plaintiff seeks to
4 extend this deadline, they do not oppose the request. *Id.*

5 On April 1, 2021, defendants filed a response to the Court's March 11, 2021, order
6 indicating that they did intend to rely on the surveillance video in support of their motion for
7 summary judgment and would work to arrange for plaintiff to view the video and that the
8 viewing would likely take place in the next two weeks. Dkt. 44. Defendants also indicated they
9 would file a confirmation with the Court once the viewing of the video was complete. *Id.*
10 However, to date defendants have not filed a confirmation that plaintiff has view the video. On
11 April 12, 2021, plaintiff also filed two documents (Dkts. 46, 47) which appear to indicate some
12 dispute or difficulty with viewing the surveillance video, although the exact nature of the dispute
13 or difficulty is unclear.

14 In light of the fact that it appears plaintiff may not yet have viewed the video which
15 defendants rely on in support of their motion for summary judgment, the Court hereby **ORDERS**
16 as follows:

- 17 • Defendants shall arrange for plaintiff to view the video evidence, to the extent he has not
18 already done so, on or before **May 26, 2021**, and shall file a confirmation that the
19 viewing has taken place with the Court by **May 27, 2021**.
- 20 • Plaintiff's motion for extension (Dkt. 41) is GRANTED in part and DENIED in part.
 - 21 ○ The motion is granted to the extent that the deadline for plaintiff to file a response
22 to defendants' motion for summary judgment is extended to **June 14, 2021**.

23 Plaintiff is advised that his response should include any and all arguments and

evidence he intends to assert in opposition to defendants' motion for summary judgment.

- To the extent plaintiff seeks an extension of the trial and discovery deadlines his motion is denied. No trial date has been set in the case and the discovery deadline expired several months ago and plaintiff's motion sets forth no basis to re-open discovery at this time.
- The Clerk is directed to re-note defendants' motion for summary judgment (Dkt. 27) to **June 18, 2021**.
- The Clerk shall provide a copy of this order to both parties.

DATED this 11th day of May, 2021.


BRIAN A. TSUCHIDA
United States Magistrate Judge